

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL J KEARNEY,

Plaintiff,

v.

JOHN D SNAZA,

Defendant.

CASE NO. C13-5383 RJB-JRC

ORDER

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

Plaintiff asks the Court to find defendant in contempt for not filing a timely answer and plaintiff asks the Court to impose sanctions (ECF No. 52). Plaintiff seeks return of all items taken from him through the state's civil forfeiture proceedings, reimbursement for the payment of the filing fee, and plaintiff asks that the Court strike the answer. The Court declines to impose sanctions or enter a finding of contempt for the reasons stated below.

1 The Court ordered service in this action on May, 23, 2013 (ECF No 7). Defendants filed
2 a notice of appearance on June 6, 2013 (ECF No. 18). The Court's order of service gave
3 defendants 60 days to answer. Therefore, defendants should have filed an answer on or before
4 July 22, 2013. Between July 5, 2013 and July 9, 2013, plaintiff filed three conflicting motions
5 (ECF No. 25, 26, and 29). Plaintiff asked the Court to order defendants to file an answer (ECF
6 No. 25). He also sought leave of Court to file an amended complaint (ECF No. 26), and asked
7 the Court to stay defendants' filing of an answer until plaintiff had filed an amended complaint.
8 (ECF No. 29).

9 Given plaintiff's conflicting motions, it is understandable that defendants did not file an
10 answer and waited for guidance from the Court. On August 14, 2013, the Court entered an order
11 denying plaintiff's motions (ECF No. 43). Defendants should have answered the complaint
12 within fourteen days of receiving the Court's order. *See* Fed. R. Civ. P. 12(a)(4)(A). Thus, as of
13 August 29, 2013, defendants would have been in default. However, on August 26, 2013 plaintiff
14 filed a motion to consolidate this case with another (ECF No. 47). Again, plaintiff's actions
15 made it unclear when an answer would be due.

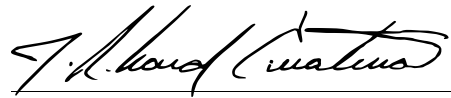
16 On September 10, 2013, the Court entered the order denying plaintiff's motion to
17 consolidate the actions and defendants should have filed their answer on or before September 25,
18 2013. *See* Fed. R. Civ. P. 12(a)(4)(A). Defendants did not file an answer and on October 28,
19 2013 plaintiff filed his motion for default (ECF No. 50). Three days later, on October 31, 2013,
20 defendants answered the complaint.

21 Defendants' counsel admits that the answer was late and takes the responsibility for the
22 late filing (ECF No. 56). Counsel states "[f]rom the date of filing the original complaint on May
23 21, 2013, to the Motion for Default filed on October 28, Plaintiff has filed at least twenty three
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1 (23) separate Motions, Supplements, Notices and missives with this Court. I admit that I
2 overlooked the filing of an Answer on July 9, 2013. The omission was neither intentional nor
3 made with malice. I apologize to the Court and to the Plaintiff, Mr. Kearney.” *Id.*

4 By the Court’s calculations, counsel’s oversight has resulted in a delay of the action of
5 just over one month. Given the complications in determining the correct due date for filing the
6 answer, the Court will not impose sanctions or enter a finding of contempt in this case.

7 Dated this 9th day of December, 2013.

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9 J. Richard Creatura
10 United States Magistrate Judge
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